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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 1076/2009 & IA No.7672/2009 (u/O XXXIX R-1&2 CPC)
MERCK KGaA & ANR Plaintiffs

Through: Ms. Kripa Pandit, Adv.

Versus

INTRA LABS INDIA PVT. LTD. Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.12.2017

1. The plaintiffs No.1&2 namely Merck KGaA and Merck Limited instituted this suit against the sole defendant namely Intra Labs India Pvt. Ltd. for permanent injunction restraining infringement of trade mark by use of the suffix, 'BION' which is found in various trade marks of the plaintiffs with respect to pharmaceutical and medicinal preparations, by adopting the trade mark 'CARBION-AD' and from so passing off its goods as that of the plaintiffs and for ancillary reliefs to delivery and recovery of damages.
2. The suit was entertained and summons thereof ordered to be issued, though no *ex-parte* ad-interim relief sought granted.
3. The defendant appeared and contested the suit. Pleadings were completed and the following issues framed on 2nd March, 2012:

"1. Whether this Court has territorial jurisdiction to entertain and try this controversy? OPD

2. Whether the plaintiff is entitled to a decree for permanent injunction against the defendant in terms of prayer (a) of the plaint? OPP

3. Whether the plaintiff is entitled to a decree for rendition of accounts or in the alternative a decree of Rs.20,05,400/- towards damages in terms of prayer (d) of the plaint.

4. *Relief.*”

and the parties put to trial. No order was made on the application of the plaintiffs for interim relief.

4. The plaintiffs examined its General Counsel and Company Secretary Mr. Vikas Gupta as PW-1 and one Mr. Vishal Kath as PW-2 and who were cross-examined by the counsel for the defendant and discharged. The plaintiffs closed their evidence on 5th July, 2014 and the suit posted for evidence of the defendant. The defendant failed to lead any evidence despite opportunity and the counsel who was appearing for the defendant also sought discharge and none else appeared for the defendant. The right of the defendant to lead evidence was closed on 10th April, 2015 and the suit posted for hearing *ex-parte* final arguments.

5. While hearing *ex-parte* final arguments on 13th January, 2016, attention of the counsel for the plaintiffs was drawn to ***Indian Performing Rights Society Limited Vs. Sanjay Dalia*** (2015) 10 SCC 161 and finding that the defendant is situated at Bangalore, Karnataka and there is no averment /evidence of the plaintiffs that the plaintiffs do not have any office at Bangalore, it was enquired so from the counsel for the plaintiffs. The counsel for the plaintiffs sought time to verify and to file additional affidavit. The plaintiffs have filed additional affidavit of PW-1 Vikas Gupta to the effect that the plaintiff No.2 is the subsidiary Indian company of plaintiff No.1 and the plaintiff No.2 does not have any office at Bangalore and the only regional office of the plaintiff No.2 is situated at Delhi.

6. On 15th September, 2017, the counsel for the plaintiffs stated that though the plaintiffs have not led any evidence qua damages but the plaintiffs would still be entitled to actual costs of the suit and the plaintiffs were permitted to place on record the actual litigation expenses by way of affidavit. The plaintiffs have filed another affidavit dated 6th December, 2017 of PW-1 Vikas Gupta of the plaintiffs having spent a sum of Rs.6,84,898/- in pursuing this suit.

7. The counsel for the plaintiffs has been heard.

8. The plaintiffs, on the basis of pleadings and evidence led, have made out a case for grant of relief of permanent injunction as claimed in prayer paragraphs (a) & (b) of the plaint dated 17th August, 2009. In the circumstances, no case for granting the relief of delivery or of damages to the plaintiffs against the defendant is made out. The plaintiffs shall however be entitled to actual costs of the suit, this being a commercial suit, of Rs.6,84,898/- from the defendant.

9. A decree is accordingly passed in favour of the plaintiffs and against the defendant, of permanent injunction in terms of prayer paragraphs (a) & (b) of the plaint dated 17th August, 2009. The plaintiffs shall also be entitled to costs of the suit in the sum of Rs.6,84,898/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 08, 2017

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